IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Civil Appellate Jurisdiction

First Appeal No.459 of 1998

The State of Maharasthra ... Appellant

V/s

1. Shri Bhaskar Dinkar Karande
2. Shri Sharad Dinkar Karande
3. Shri Shyamsundar Dinkar Karande
4. Shri Harishchandra Dinkar Karande
5. Shri Ramesh Dinkar Karande
6. Shri Arun Dinkar Karande
7. Shri Prakash dinkar Karande
8. Shri Vitthal Dinkar Karande ..Respondents

Mrs. Geeta P. Mulekar,A.G.P. for Appellant

Shri G.S.Hegde for Respondent nos.1 to 8

CORAM: R.M.S.KHANDEPARKAR

AND V.M.KANADE,JJ.

DATED:13th October 2005

ORAL JUDGMENT:- (Per R.M.S.Khandeparkar,J.)

1. This appeal arises from the judgment and award dated 20-7-1995 passed by the Joint Civil Judge, S.D.

at Sawantwadi, allowing the Reference under Section 18 of the Land Acquisition Act, 1894, hereinafter called as "the said Act", enhancing the compensation to the extent of Rs.2000/- per Ar from Rs. 250/- per Ar which was awarded by the Land Acquisition Officer.

2. The Respondents' land was sought to be acquired by issuance of Notification under Section 4 of the said Act on 29-1-1990. After complying with the provisions of the said Act, award came to be declared by the Land Acquisition officer on 31-3-1992 offering compensation of Rs.250/- per Ar for cultivable land admesuring 6 H and 58 Ars and Rs.2 per Ar in relation to 95 Ars of Potkharaba land. Being aggrieved, the Respondents preferred the Reference under Section 18 of the said Act and the Reference Court by the impugned award enhanced the compensation as stated above. Hence the present appeal.

3. The Appellant has preferred this appeal on the ground of bar of limitation to entertain the Reference by the Reference Court as well as on the ground that the Reference Court erred in considering the documentary evidence in the form of sale instances produced by the Respondents relating to the period which was after the issuance of the Notification under Section 4 of the Act and further on the ground that enhancement has been granted without any cogent

evidence on record to justify such enhancement.

4. While assailing the impugned award on the ground of bar of limitation, it was contended that the same was filed beyond the period by one day of limitation inasmuch as that the notice under Section 12(2) of the said Act was served on 7-12-1992, but the reference application was filed on 20-10-1992. It was sought to be contended that Respondents have admitted in their reference application about the service of such notice and therefore the Reference application having been filed beyond period of limitation, the Reference Court had no jurisdiction to entertain the same and ought to have dismissed the same in limine. The learned Advocate appearing for the Respondents, on the other hand, submitted that the reference application was filed within the period of limitation from the date of the service of notice under Section 12(2) and the contention sought to be raised that it was barred by law of limitation is devoid of substance.

5. On merits referring to the impugned judgment and award as well as the evidence on record, it is sought to be contended on behalf of the Appellant that the Reference Court could not have placed any reliance on the sale instances of August 1990 and March 1991 as the Notification was issued in January 1990. Apart from said sale instances, no other evidence was

produced by the Respondents and therefore merely on the basis of their claim about the income derived from the property in question, either on account of agricultural operation or on the account of alleged extraction of silica from the soil of the land in question, the Reference Court could not have enhanced the compensation to the extent it has been enhanced. On the other hand, the learned Advocate appearing for the Respondents referring to the testimony of the claimant Shamsundar Dinkar Karande submitted that the same disclosed in detail about the nature of the land and income derived therefrom and the same has not been disapproved nor denied by the appellant. Besides, the Government itself had acquired the land in the year 1986 at a distance of about 4 KM away from village from which the land in question was acquired and it was awarded compensation at the rate of Rs.800/- per Ar. According to the learned Advocate therefore the Land Acquisition officer could not have awarded the rate of Rs.250/- per Ar in respect of the land acquired in the year 1990, nearly 4 years after the land which was acquired at the rate of Rs.800/- per Ar.

6. Upon hearing of the learned Advocate for the Appellant and perusal of the records, two points arise for consideration, viz.

i. Whether the Reference was barred by law of Limitation, and

ii. Whether the materials on record justify the enhancement of the compensation to the extent it has been enhanced by the Reference Court or the amount awarded by the Land Acquisition officer needs modification and, if so, to what extent?

7. As regards the period of limitation, undoubtedly, the reference application was filed on 20-10-1992. It is also not disputed that the notice under Section 12(2) of the said Act was dated on 7-9-1990. However, there is no material on record to disclose the exact date on which the said notice was served upon the Respondents. The period of limitation which is prescribed under Section 18(2)(b) requires necessary material on record regarding the exact date of service of notice under Section 12(2). The statement in the application under Section 18 filed by the claimants merely discloses that the notice was dated 7-9-1992 and not that the said notice was either issued and/or served upon the claimants on a particular day. Besides, the statement regarding the date of notice in qualified by further statement to the effect that the claimants were required to attend the office of the land acquisition officer on 25-9-1992 to collect the compensation awarded in the said Award. Obviously,

therefore, in the absence of specific material on record in relation to the date of service of the notice under Section 12(2) after it was dated or issued on 7-9-1992, and considering the fact that the Reference Application was filed on 20-10-1992, it is not possible to hold that the reference application was filed beyond the period of limitation. Even assuming that notice was issued on 7-9-1992, the day of issuance of the notice will have to be excluded from the period of limitation.So also the day of service of the notice will have to be excluded for the purpose of calculating the period of limitation. On such exclusion of two days from the period between 7-9-1992 to 20-10-1992, the period of 42 days would expire on 20-10-1992. Being so, it can be said that the Reference Application was filed beyond the period of limitation as the same was filed on 20-10-1992. The first point for consideration, therefore, has to be answered in negative.

8. As regards the second point for consideration, undoubtedly, a plain reading of the impugned award would disclose that the reference court has totally forgotten that it was dealing with the matter at the original stage and not at the appellate stage. The award under Section 11 of the said Act is not an order, nor the proceeding under Section 18 of the said Act are in the form of appeal against said award. It

is not function of the reference court to analyse the award declared under Section 11 and to ascertain whether the findings in such award are being borne out from the materials which were placed before the L.A.O. or not. The reference court ought to have ascertained as to whether the claimant has established his or her claim for enhancement of compensation and if so, to what extent. It is obligatory for the claimants to establish that they are entitled for enhancement of compensation to the extent to which they have claimed. Considering the same, therefore, the approach of the reference court in dealing with the matter being apparently contrary to the procedure to be followed in the land acquisition reference matters under Section 18 of the said Act, the impugned award, on that count itself, cannot be sustained. The first part of the second question has to be answered in negative.

9. The learned AGP is also justified in contending that the reference court could not have relied upon the said sale instances in relation to the period subsequent to the issuance of the notification under Section 4 of the said Act. It is well settled law that the claimant can rely upon the sale instances pertaining to the land in nearby locality and the land in neighbourhood village or town, provided they relate to the period prior and the proximity to the issuance of the notification under Section 4 of the said Act.

It is not the case in hand that there were no sale instances available on record relating to the period prior to January 1990. In fact, there were about 24 sale instances for the years 1986 to 1989 placed on record. However,the same were totally discarded by the reference court solely on the ground that they were prior to the issuance of the said notification. It was totally improper for the reference court to discard such sale instances on the said count though they could have been rejected on the ground of absence of evidence regarding the compatibility of the land in question and the pieces of land which were subject matter of those sale instances. Indeed, the evidence on record no where discloses any such compatibility of land acquired and the pieces of land which are subject matter of those sale instances. Being so, the contention that the reference court illegally discarded such sale instances cannot be accepted. The law on the point that no evidentiary value can be assigned to the sale instances for the period subsequent to the issuance of the Notification under Section 4 is well established. The sale instances in the form of Exhs. 30 and 39 which are dated 23-8-1990 and 2-3-1991 cannot be of any assistance to the Respondents to justify the enhancement of compensation. Being so, the documentary evidence which has been placed on record is of no help to the claimants to justify the enhancement of compensation

over and above the amount awarded by the Land Acquisition officer. In the circumstances, it means that the said documentary evidence on record does not disclose any material to justify the claim for enhancement of compensation in relation to the land acquired.

10. As rightly submitted by the learned Advocate for Respondents, perusal of the testimony of Shamsundar Karande undoubtedly discloses the material piece of evidence regarding the nature of land in question as also the income which was derived by the claimants out of utilisation of such land. Admittedly, the land was used for agricultural purposes. The claimants used to grow rice, nachani and ground nut in the acquired land and used to get the annual income of Rs.20,000/- from the acquired land. He has also claimed that he used to supply silica from the land in question to silica factory situated at village Karul which is 3 k.m. away from the acquired land as also to the silica factories situated at Kolhapur and Sangli. However, no evidence has been produced as regards the income derived from silica alleged to have been supplied of such silica factories. In this regard, it was necessary for the claimants to produce either some documentary evidence or atleast some witnesses who are directly connected with the factories to which such supply of silica was allegedly made by the claimants.

However, as regards the agricultural income, once it was undisputed fact that the land was an agricultural land and according to the Land Acquisition officer area of 6 Hectors 58 Ares was cultivable land and the claimants having deposed on oath that they used to cultivate rice, nachani and ground nut in the said land and he was getting annual income of Rs.20,000/-, the same could be considered as having been sufficiently established by the Respondents. There is no justification to discard the said evidence produced by the claimants.

11. The claimants have also brought on record the fact that in the year 1986 the Government itself had acquired the land in village Kurli for the purpose of dam and the village Kurli is situated at a distance of 4 K.M. from Phonda, from which the land in question was acquired. It is also stated that land which was acquired from village Kurli was awarded compensation at the rate of Rs.800/- per Ar in the year 1986. Undisputedly, the claimants have not produced on record the evidence regarding the comparability of land which was acquired at village Kurli and land in question. Nevertheless, it gives some indication that the land in the vicinity was worth more than the amount which was awarded by the Land Acquisition officer in the yea 1990.

12. It is well settled law that when no evidence in the form of sale instances is available and the acquired land is agricultural land used for agricultural purposes and the evidence regarding income derived from the land is available on record, the method of capitalisation of annual income by applying the multiplier could be adopted for the purpose of evaluating the market value of the land, rather it is the appropriate method of valuation in such cases.

13. As the evidence on record discloses that annual income of the claimants was Rs.20,000/- from the agricultural operations, the land at the distance of about 4 K.M. from the village of Kurul which was acquired in the year 1986 at the rate of Rs.800/- per Ar, certainly for the purpose of applying the multiplier of ten in relation to the income, it could be taken as Rs.20,000/- per annum. We are aware that before applying this multiplier, it is necessary to deduct the expenses which are required to be incurred for agricultural operation. However, we do not find it necessary to deduct the said amount considering the fact that about 4 years prior to the acquisition of land in question from neighbouring village land, compensation of Rs.800/- was awarded by the Government. Though there is no sufficient proof regarding exact quantum of income from the supply of

silica from the land in question, the fact that the claimants were receiving some amount by supplying silica from the land in question is apparent from the evidence. Besides, the multiplier which we are applying is of ten and not of twelve or fifteen. Considering the same we find it appropriate to have Rs.20,000/- as the base value for the purpose of application of multiplier of ten. Since the land in question is an agricultural land, the multiplier method is a proper method and considering the same the total market value will have to be calculated as Rupees twenty thousand multiply by ten equal to Rs.2 lacs (Rupees two lacs). Certainly the claimants would be entitled for other benefits available under Section 23(1A) and 23(2) of the said Act to be calculated on the basis of market value arrived hereunder.

14. For the reasons stated above, therefore, though the enhancement granted by the Reference Court cannot be upheld, certainly at the same time, the compensation awarded by the Land Acquisition Officer cannot be sustained and is liable to be modified as stated above.

15. In case any amount is paid in excess to the claimants in accordance with award, the same shall be refunded within a period of 12 weeks at the rate of 6% p.a.. In case any amount is due and payable to the

claimants, the same shall be paid within a period of 8 weeks from today with interest to be calculated in terms of Section 34 of the said Act. The impugned Award stands modified accordingly in the above terms. Appeal is disposed of accordingly. No order as to costs.

(R.M.S.KHANDEPARKAR,J.)

(V. M. KANADE, J.)